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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/824,679	04/04/2001	Florent Duqueroie	05725.0876-00	3634

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FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER LLP
1300 I STREET, NW
WASHINGTON, DC 20006

EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 09/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/824,679	Applicant(s) DUQUEROIE, FLORENT	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 04 April 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 17, 38 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by European Patent '260.

With regard to claims 1-4 and 17, EP '260 discloses an application member for applying hair preparation comprising a base portion (6), a plurality of teeth being formed of an elastically deformable material (abstract, lines 5-6) and also having a free end and an end adjacent to the base portion, wherein the teeth and the base portion having a single piece, unitary construction formed by molding; at least one of the teeth further comprising a dispensing orifice (9) at the free end, and a passage (at 3) configured to enable the dispensing orifice to be placed in flow communication with a reservoir (7) configured to contain a product and at least one wall (at 6) on the base portion, the at least one wall being located at least partially along a periphery of a region of the base portion from which at least some of the teeth extend and being configured to collect product flowing from the dispensing orifice of the at least one of the teeth. In regard to claims 38 and 51, the claimed method is seen to be inherent in the above apparatus.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-10 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '260.

With regard to claims 5-10 and 52, EP '260 discloses an application member for applying hair preparation comprising all the claimed limitations in claim 1 as discussed above except for the length of each of the plurality of teeth from the base portion to the free end being substantially the same and the height of the at least one wall above the base portion being not more than a length of any of the plurality of teeth from the base portion to the free end and also the height of the at least one wall tapers from the first portion to the second portion. It would have been an obvious matter of design choice to construct the size of the teeth and the wall as discussed above since such a modification would have involved a mere change in the size of the component.

Claims 11-16, 18-37 and 39-50, 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baudin et al.

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With regard to claims 11-16, 18-37 and 53, EP '260 discloses an application member for applying hair preparation comprising all the claimed limitations in claim 1 as discussed above except for the support having one end intended to be associated with the application member and another end intended to be associated with the reservoir, the support including at least one channel and the elastically deformable material having a Young's flexural modulus of not more than about 200 MPA or having a Shore A hardness of from about 30 to 60. Baudin et al discloses a hair applicator device (figs. 2-5) comprising at least one wall (fig. 5 at 2) being formed of an elastically deformable material, the at least one wall and a surface of a base portion forming a drip pan (150 fig. 2a) to collect product flowing from the dispensing orifice of the at least of the teeth (108 fig. 3a), the device further having a support (107) having one end intended to be associated with the application member and another end intended to be associated with the reservoir (101), the support including at least one channel (fig. 4a) configured to provided product flow from the reservoir to the passage of the at least one of the teeth; the reservoir having a handle body member (103) with at least one elastically deformable wall (col. 5, line 12). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular support member as taught by Baudin et al into the hair applicator device of EP '260 for the purpose of transferring the hair product from the reservoir to the applicator member and it would also have been an obvious matter of design choice to construct the elastically deformable material having a Young's flexural modulus of not more than about 200 MPA or having a Shore A hardness of from about 30 to 60, since it has been held to be

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within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In regard to claims 39-50, the claimed method is seen to be inherent in the above apparatus.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chu et al, Andrews, Nagy, Tosto, Bertieri and Foreman are cited to show the state of the art with respect to a hair applicator device.

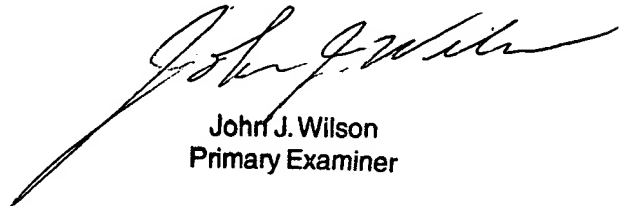
This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (703) 306-9182. The examiner can normally be reached on Mon-Fri 9:30-7:00; alternate Mondays off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Robyn Kieu Doan
Examiner
September 7, 2002



John J. Wilson
Primary Examiner